# The Solicitors' Journal

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# CURRENT TOPICS

### Fusion and the Cost of Litigation

MR. RAYMOND BLACKBURN, M.P., who is a solicitor as well as a former Law Society lecturer, has published his strong views on the law in an article in the *Daily Herald* of 5th April under the caption "The time is long overdue to clean up the law." These are the faults which he finds: (1) "You have to pay one lawyer (called a solicitor) to pay another lawyer (called a barrister) to give you the opinion on the state of the law with which you are concerned." (2) "Yet, even then, however wrong the opinion may be, there is no redress for foolish advice against either barrister or solicitor." (3) "Lawyers . . . by maintaining a system under which the legal profession is divided into two halves . . . have gone far towards doubling the amount of money which lawyers draw from law suits." (4) "The uncertainty of the law itself is infuriating when the costs of finally establishing what the law is fall on some innocent litigant whom many of the judges may have thought to be in the right." The suggestion in the first three of these extracts from Mr. Blackburn's *ipsissima verba* seems to be that fusion of the two branches of the legal profession would lead to much-needed economies. It certainly would lead to solicitors having a right of audience in the higher courts. Whether a large number would use such a right is another matter. Even if they did, it is difficult to see where the saving of legal costs would result. Is it suggested that if a solicitor issued the proceedings, conducted the correspondence and interlocutory steps and fought the case in court, he would not be allowed the costs of drawing his own brief and having someone to attend him in court? Similar considerations apply to the briefing of counsel to give his opinion. A solicitor is rightly given a discretion to decide when that abnormal expense is to be incurred. Whatever advantages fusion may bring, it is doubtful whether cheaper litigation is one of them. As to the fourth extract, one can only wonder what utopian language is to be used for drafting laws which are to be completely devoid of uncertainty. If, however, the uncertainty is such that even the House of Lords is divided, there is much to be said in favour of such an issue being tried at the public expense.

### Service Divorces

A POINT of great public importance was made by Lt.-Col. R. F. BURNAND, better known to the legal profession as Master Burnand, in a letter to *The Times* of 20th April from the Army Welfare Service Department of the War Office. Contrary to what had been alleged in previous correspondence, the large majority of those now seeking divorce, he said, were married before the war, and thorough machinery has been operating in the services for the last five years to do all that is humanly possible to save marriages. He gave the following particulars: "The general procedure in the services is that as soon as information is received that a man's marriage is breaking down, both parties are interviewed on a friendly basis by welfare officers, probation officers, and others trained and experienced in such matters. Often, when possible and expedient, the husband and wife, if in the same country, are brought together for discussion and given help with a view to resolving their differences and starting afresh. Only when this machinery for reconciliation has failed does an application by one of, or below, the rank of sergeant or petty officer for assistance to seek divorce under the service legal aid scheme fall to be dealt with by a legal aid section. The staffs of those sections then do all in their power to induce the applicant to forgive and forget and abandon the decision to divorce." Lt.-Col. Burnand quoted from the Earl of Munster's recent speech in the House of Lords, when he said that right up to the time when the parties go into the courts continuous efforts are made to effect a reconciliation, and at that stage the efforts are made by the legal aid section. Few will doubt that the work of reconciliation is far more valuable to the State than the work of divorcing large numbers of the population. The experience of the services has shown that facilities for avoiding divorces and separations should be part of the permanent machinery of all matrimonial courts.

### Penal Reform

SOLICITORS are in a better position than most people to appreciate that even more important than to have the right laws under which to live, is to have the right persons to administer those laws. This was admirably put by Mr. J. CHUTER EDE, the Home Secretary, in his address at the formal opening of the Imperial Training College for Prison Officers at Wakefield on 5th April, 1946. He said: "Home Secretaries and Prison Commissioners may be men of the greatest enlightenment and good will; they may persuade Parliament to pass the most humane and progressive legislation; they may make the most admirable public speeches and Statutory Rules and Standing Orders; but it will all be wasted breath and wasted ink unless they choose the right men to carry out those rules and orders, inspire them with the right ideas, and provide them with conditions of service that will make it possible for them to carry out their duties not only with loyalty, not only with precision, but with intelligence, with enthusiasm, and with understanding." In a reference to the shortage of trained staff, the Home Secretary said that during the war a shrinking staff had to cope with a growing population. During the last two years our prisons had been sorely overcrowded. However, the greater part of the officers called to the Forces were now back, and there

was no lack of new recruits of a good standard. For at least twelve months recruits must be taken in at the rate of no less than 100 a month. Mr. Ede also announced that he hoped himself to have the privilege, at no distant date, of again introducing to Parliament the Criminal Justice Bill which fell by the way in 1939, revised in the light of the experience and further thought of recent years. The re-introduction of a revised Criminal Justice Bill, together with the possibilities of increased attention being given to the training of prison officers, should prove to be important steps towards removing any reproaches that may rightly be made against our penal system.

### Fit for Service: Fit for Pension

A REPLY by the MINISTER OF PENSIONS to a number of questions in the Commons on 11th April gave the attitude of his Ministry to Mr. Justice DENNING's recent decision in favour of an ex-service man on the grounds of " fit for service, fit for pension." He said that in the judgment referred to, the learned judge expressed the view that the interpretation to be placed on Article 4 of the Royal Warrant was that if a man was accepted for service in a certain medical category there was a presumption that at the time of his acceptance he was fit for the kind of service demanded of a man in that category ; and that in the event of his discharge subsequently on medical grounds due to deterioration in his health there was a presumption that the deterioration was due to his service. He added that the presumption was not a compelling presumption but a provisional one. In order, however, to defeat the man's claim, the evidence had to show a real preponderance of probability that his condition was not aggravated by war service. In the case before him the learned judge held that there was no such evidence and that the tribunal could not properly come to a conclusion in favour of the Ministry. While there might at times be a difference of opinion as to what constitutes a real preponderance of probability, Mr. PALING did not think that the general line of approach laid down by the learned judge differed materially from that followed by his own Department. The fact that the High Court decision was against the Ministry did not mean that they were wrong in all the other cases.

### Housing News

SOME of the news about housing this month is a little more encouraging than it has previously been. For instance, the monthly housing return for 31st March, 1946 (Cmd. 6807), shows only 6,070 permanent houses and 24,382 temporary houses completed, but 65,399 permanent and 18,358 temporary houses are under construction. It is also not unsatisfactory that during the year 19,692 unoccupied houses have been requisitioned, 78,224 unoccupied war-damaged dwellings have been repaired and made fit for occupation, and 12,573 " family units of accommodation " have been provided by converting existing houses. During the year 31st March, 1945 to 31st March, 1946, accommodation has been made available by various methods for over 140,000 families. A further welcome feature in the news about housing is the announcement by the Ministry of Health, on 30th April, in Circular 92/46, to housing authorities and county councils, that the Minister welcomes the suggestion by the National Federation of Building Trades Employers and the Federation of Registered House Builders that a substantial increase in the number of permanent houses provided by local authorities can be secured by bringing into action the services of private builders who are not able to undertake contracts for local authorities on the usual basis. He states that he is prepared to consider proposals from local authorities to include in their housing programme : (1) proposals for the erection of small groups of houses by house-builders approved by the local authority in accordance with certain arrangements designed to meet the case of the small builder who is experienced in house building but who has not the organisation or the technical staff to deal with the plans, specifications, bills of quantities and forms of contract incidental to a full scale housing scheme ; (2) proposals for the erection of houses by private enterprise house-builders on land owned by them in accordance with other specified arrangements are designed to meet the case of house-builders who have land in their possession and are prepared to make it available for the erection of houses for local authorities.

### New Rules and Orders

THE attention of readers is drawn to a number of statutory rules and orders, two of which are printed in full in this issue of this journal, and the third (The Matrimonial Causes (Amendment) Rules) will appear next week. The Tenancy Agreements (Peace Treaties) Order, 1946, is made pursuant to s. 2 (2) of the Validation of War-Time Leases Act, 1944, and appoints 9th May, 1946, to be treated as the date of the conclusion of a peace treaty with each of the European States with which His Majesty has been at war since 3rd September, 1939, and 15th August, 1946, to be treated as the date of the conclusion of a peace treaty with Japan. This order carries a stage further the previous Tenancy Agreements Orders (89 SOL. J. 295, 425) which, it will be recalled, fixed the respective dates for the end of the war with Europe and Japan as 9th May, 1945, and 15th August, 1945. The Rules of the Supreme Court (No. 2), 1946, mainly deal with proceedings in the High Court under the War Damage Act, 1943, the War Damage (Valuation Appeals) Act, 1945, and the Acquisition of Land (Compensation for War Damaged Land) Rules, 1945. The attention of solicitors is particularly drawn to rr. 3 and 4, the first of which prescribes the rate at which printed copies of documents furnished by one party to any other party are to be paid for by that other party, and substituting 2d. for 1½d. per folio. Rule 4 relates to the maximum amount per folio which may be allowed on taxation for printing pleadings, etc., which now becomes 3s. 4d., instead of 3s. 1d., in both the higher and lower scales. One of the points to observe in The Matrimonial Causes (Amendment) Rules, 1946, is that divorces on the ground of incurable insanity (s. 176 (*d*) of the Judicature Act, 1925, as amended by the Matrimonial Causes Act, 1937), or mental deficiency under the Mental Deficiency Acts, 1913 to 1927, or recurrent insanity or epilepsy (s. 7 (1) (*b*) of the 1937 Act), are still classified as defended causes. Another provision gives better facilities for co-respondents to be heard on matters of costs. Finally, a useful change is that which is now in r. 58A, authorising a registrar to exercise all the jurisdiction and powers conferred on a judge of the Supreme Court by s. 17 of the Married Women's Property Act, 1882, with regard to disputes between husband and wife as to property rights.

### Recent Decisions

In *Yeovil Rural District Council* v. *South Somerset and District Electricity Company, Ltd., and Another*, on 30th April (*The Times*, 1st May), a Divisional Court (THE LORD CHIEF JUSTICE and HUMPHREYS and SINGLETON, JJ.) held, that in estimating the rateable value of an electricity company's undertaking as a whole, a deduction should be made in respect of the whole sum payable by the company for excess profits tax.

In *Bomford* v. *South Worcestershire Assessment Committee and Others*, on 2nd May (*The Times*, 3rd May), a Divisional Court (THE LORD CHIEF JUSTICE, and HUMPHREYS and SINGLETON, JJ.) held that s. 72 of the Local Government Act, 1929, required that agricultural cottages used for agricultural labourers must, for rating purposes, be dealt with as if they were let to the farmer, subject to the restrictive covenant that he could only use them for the housing of workers on his farm, and it followed that the value of such cottages for rating purposes was not necessarily limited to the amount that the farmer could get for them by deduction from wages. The court held that a farmer might only be able to secure the services of a certain valuable man by paying a higher rent for a cottage than the amount which he could get back by deduction from the worker's wages, and it was to that possible higher rent that the assessment committee were to have regard.

# COMPANY LAW AND PRACTICE

## PAYMENTS TO DIRECTORS: INCOME TAX CONSIDERATIONS—II

LAST week I began to consider the income tax questions that may arise when a company makes a lump sum payment to one of its directors for compensation for loss of office or for some such reason, and I discussed some of the cases where such payments were allowable deductions when computing the profits of the company under the rules applicable to Sched. D.

This week I intend to discuss the question of whether or not such payments are subject to tax in the hands of the directors, and that depends on whether or not the payment comes within the terms of r. 1 applicable to Sched. E, which provides that tax shall be charged under that schedule in respect of all salaries, fees, wages, perquisites or profits whatsoever from the employment.

I think it is fair to state it as a rule that a genuine payment made by a company to a director in compensation for loss of office is not taxable in the hands of that director: for example, in *Chibbett* v. *Joseph Robinson & Sons* (1924), 9 T.C. 48, a ship-owning company was wound up. It had employed the respondents to manage its affairs, and on the winding up it distributed part of its assets to its members, gave a part to the managers in compensation of the loss of their office, and sold the balance of the assets, including two ships, to a new company. The respondents became the managers of this new company, but they did not do this in pursuance of any agreement previously entered into by them, and in fact their remuneration from the new company was less than that from the old. Rowlatt, J., held that the part of the assets that was distributed by the old company to the managers was not taxable in their hands, and he said: "It seems to me that a payment to make up for the cessation for the future of annual taxable profits is not itself an annual profit at all"; and he went on to say that he would have expected a similar result to be arrived at in the case of the payment of damages for breach of an agreement of service.

This expectation was justified in the case of *Du Cros* v. *Ryall* (1935), 19 T.C. 444, where the company repudiated its service agreement with its general manager. The general manager sued the company and the action was settled on the terms of the manager abandoning all claims against the company and receiving a lump sum as "agreed damages." Finlay, J., held that this lump sum was not taxable, and said: "This is a question of assessment under Sched. E and . . . I am of opinion that these damages cannot be regarded as profits and gains." The result must obviously have been the same if the damages had been paid not as the result of the settlement but had been awarded by the court in the action.

In both these cases the result was arrived at on the theory that the payments arose not from the employment but from the stopping of the employment, and so were not within r. 1 of Sched. E. It is, however, clear that, supposing in the former case it had been a term of the agreement with the managers that on their ceasing to be employed they should be paid compensation for the cessation of that employment, payment which would have been made under the terms of the contract of employment would have been a fee or perquisite from the employment, and therefore taxable.

A similar result to the two cases referred to above was come to in *Duff* v. *Barlow* (1941), 23 T.C. 636, although the way in which the decision is there put is slightly different. There a person already the managing director of a company had entered into an agreement with the company whereby he became entitled to certain additional remuneration for performing certain services in connection with a subsidiary company. The managing director continued to be managing director, but by agreement with the company the agreement relating to the subsidiary company was abrogated and the managing director received a lump sum payment in consideration of his abandoning his rights thereunder. Lawrence, J., said: "The question seems to me to be whether this sum was paid as compensation for loss of Mr. Barlow's office, which being a source of income was in itself a capital asset, or was a lump sum payment as remuneration for future services in that office. If it was the former it was not assessable." It clearly appears from that judgment that had the managing director bound himself to continue to perform his duties in connection with the subsidiary company as a part of the bargain the payment would have been assessable. It would obviously then have been a profit from his employment by the subsidiary company.

In coming to this decision, Lawrence, J., relied on the remarks of Lord Atkin in *Hunter* v. *Dewhurst* (1930), 16 T.C. 605 (at p. 644). The facts of that case were exceptional, but in the course of his speech, Lord Atkin said: "It seems to me that a sum of money paid to obtain a release from a contingent liability under a contract of employment cannot be said to be received 'under' the contract of employment, is not remuneration for services rendered or to be rendered under the contract of employment and is not received 'from' the contract of employment." It should be noted, however, that the mere fact that the lump sum payment is made in pursuance of the terms of the agreement which contains the contract of employment is not conclusive, and, as is shown by the case of *Beak* v. *Robson* [1943] A.C. 352, if the payment is made not in consideration of the agreement to serve but in consideration of a separate covenant restraining the employee from carrying on or being interested in a similar business in a certain area for a certain time after the termination of the employment, the payment in that case is not subject to tax.

An example of a payment to a director which was held liable to tax is furnished by the case of *Cameron* v. *Prendergast* [1940] A.C. 549. There a director indicated to the company his intention to resign. The company was anxious for him to continue as a director, and in consideration of his agreeing not to resign and to accept a very substantially lower remuneration he was paid a lump sum. The House of Lords regarded the payment as a payment made to induce him to continue to serve the company as a director, and the result of that was that the payment was held to be part of the "salaries, fees, wages, perquisites or profits" from his office of director within the meaning of r. 1 of the rules applicable to Sched. E.

The distinction between what payments are taxable and what are not in the hands of the recipient is illustrated by the case of *Tilley* v. *Wales* [1943] A.C. 386. In that case the managing director was employed at a salary and also had the right under his service agreement to a pension for ten years on ceasing to be employed by the company.

If the position had remained unchanged there was no doubt but that his salary was taxable under Sched. E as the salary of his office of director and the pension would have been equally taxable under that part of that schedule which imposes the tax on pensions. In fact, however, the managing director entered into an agreement by which he released the company from the obligation to pay the pension and agreed to serve as managing director at a reduced salary, and in consideration therefore the company paid him a lump sum.

The House of Lords held that this lump sum must be apportioned: so much of it as was attributable to his agreement to continue serving at a reduced salary was taxable as being within the charge on profits from the office of director, and that is a decision on all fours with *Cameron* v. *Prendergast*, *supra*, but so much of the lump sum as was attributable to the commutation of pension was not taxable since it was in the nature of a capital payment substituted for a series of recurrent and periodic sums partaking of the nature of income; that is a decision similar to those in the earlier cases I have referred to above.

The result of the foregoing appears to be that in the case of these lump sum payments it is a question much easier to determine whether or not they are taxable under Sched. E in the hands of the recipients than is the question which I discussed last week, whether they are allowable deductions

in computing the profits of a business under Sched. D. As appears from the cases referred to in this article, it is, so far as the recipients are concerned, a comparatively easy matter to decide whether the payments do or do not come within the provisions of r. 1 of the rules applicable to Sched. E. Remarks in a number of the reported cases suggest that the answer to one question invariably determines the answer to the other, but, as I indicated last week, I doubt if this is so. The only true test is the provisions of the schedules and the rules applicable thereto.

# A CONVEYANCER'S DIARY

## REVIVAL OF REVOKED WILLS

So far as here material, s. 22 of the Wills Act, 1837, provides that: "No will or codicil, or any part thereof, which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required and showing an intention to revive the same." Cases sometimes arise in which it is necessary to consider the effect of this section where a codicil admissible to probate refers to a will which had been revoked at the date of the codicil as if it were a subsisting will. As Sir J. P. Wilde said in *In bonis Steele* (1868), L.R. 1 P. & M. 575, at p. 580: "Sometimes the error arises from the attorney or clerk who has laid his hand on the wrong paper; sometimes from the testator who has kept his first will in his own possession and forgotten his second, which he has left in the hand of his attorney; oftentimes from the employment of an attorney to draw the codicil, who has made an earlier will, and has been in ignorance that an intermediate will has been made." Thus, for instance, in *In bonis Steele* the testator made a will on 16th January, 1866; on the 25th October in the same year he made a fresh will revoking it. On the 12th January, 1868, he made a codicil purporting to be a codicil to "my will of the 16th day of January last past" which he purported to confirm. "The 16th day of January last past" was, of course, that date in 1867, which was not the date of any testamentary instrument of the testator. Here, then, there was not an unequivocal reference to the revoked will, though the nature of the testator's blunder was fairly clear. In *In bonis May*, which was heard with *In bonis Steele*, the reference was to an earlier will by its correct date, as also occurred in the accompanying case of *In bonis Wilson*. Sir J. P. Wilde delivered a single judgment stating the applicable principles before disposing of these three cases. He pointed out first that unless there be some latent ambiguity in the codicil, evidence of the testator's intention is not admissible. This is the ordinary rule applicable at common law to the interpretation of written instruments. Second, evidence as to the surrounding circumstances is always admissible. Third, a codicil may, by referring in adequate terms to a revoked will, revive that will if it is still in existence (but not otherwise). Fourth, s. 22 provides that the revoked will is not revived unless an intention to revive it is clear on the face of the codicil; the section was intended to do away with the much laxer rules as to implied revival which had previously existed. Fifth, "some general probabilities attend all such cases as are now under judgment. It may . . . be doubted whether any testator who bore in mind that he had revoked his will and substituted another for it ever really sat down with the purpose of revoking his last will and reviving the former one, and set about the execution of that purpose by simply making a codicil referring to his first will without more."

On the particular facts of *In bonis Steele*, the learned judge observed that there was a latent ambiguity. It is not clear whether he meant that such ambiguity arose from the fact that the codicil spoke of the will as being of 16th January, 1867, a date of no former testamentary instrument, or because he spoke of it as being of 16th January, the will of 16th January, 1866, not being a subsisting will. In any event, his lordship held that it was unnecessary to look at the affidavits because the codicil evinced no intention to revive any revoked will at all, which intention s. 22 requires to be "shown" if the earlier will is to be revived. That was so although the codicil not only purported to confirm "my will . . . of the 16th day of January last past," but also purported expressly to revoke a particular legacy of £100 which had been in the will of 16th January, 1866, but had been reduced to £50 by the later will. In *In bonis May* the court also held that the codicil did not show any intention to revive the first will, which had not only been revoked by the testator's marriage, but which he had purported expressly to revoke by a post-nuptial will, and whose signature he had torn off. *In bonis Wilson* had the same result, but was a more obvious case because there were no references at all in the codicil to the substantive dispositions of the first will. In none of these cases did the court look at the evidence and all three were disposed of on motion.

In *In bonis Stedham* and *In bonis Dyke* (1881), 6 P.D. 205, Sir James Hannen, P., had to deal with two cases where there was evidence that in framing the codicil the solicitor who drew it was applying his mind to the provisions of the first will and was seeking to revise them. In neither case was there as much of a latent ambiguity as in *In bonis Steele*; each codicil simply purported to be a codicil to the first will. Each case was dealt with on motion, but in each the affidavits as to what had occurred between the testator and his solicitor seem to have been admitted without argument. In both cases it was held that the draftsman's intention to revise the earlier will necessitated that he had also the intention to revive it. But there was no evidence of an intention to revoke the intermediate will. In each case both the wills and the codicil were therefore admitted to probate; presumably the Chancery Division had then to be invited to say what the resultant self-contradictory compound testamentary instrument meant. It is noteworthy that the court inquired not only into the intention of the testator, but also into that of the draftsman employed by him.

*In bonis Chilcott* [1897] P. 224 was a case where the difficulty arose through the testatrix having gone to a different solicitor to make the second will, and having then returned to the solicitor who had drawn the first will for the purpose of making the codicil. He had never heard of the second will, and naturally drew a codicil that purported to be a codicil to the first will, which it confirmed. All three documents were admitted to probate, evidence having been admitted. This case also was dealt with on motion.

In *Goldie* v. *Adam* [1938] P. 85 a quantity of oral evidence was apparently taken, both as to the surrounding circumstances and as to the intentions of the testator and of the solicitors who drew the wills and codicils. The testator made a will in 1929 and three codicils. By a will of 1932 he revoked all four documents. In 1933 he made what purported to be a fourth codicil to the will of 1929, purporting to confirm that will and its three codicils. The evidence seems not to have been very satisfactory, as both the partners in the firm of solicitors who had drawn all six instruments were dead before the trial. But the trouble appears to have been caused by the fact that the senior partner, who drew the 1932 will, had kept it in his own private safe and not in the safe for clients' wills, where the will of 1929 and its codicils continued to repose intact and uncancelled. By 1933 the junior partner had taken over the testator's affairs and, when the codicil of that year was wanted, got out the will of 1929 and its three codicils from the safe for clients' wills. The codicil of 1933 was then actually typed on the same piece of paper as the earlier codicils. Bucknill, J., held that there was no evidence that the testator or his advisers addressed their minds in 1933 to the contents of the will of 1929 or any of its codicils. In view of that finding of fact, which distinguished the case from *In bonis Chilcott*, he pronounced only for the will of 1932 and

the codicil of 1933. The unsuccessful defendants were allowed their costs out of the estate.

The most recent case, *In the Estate of Mardon* [1944] P. 109, lay between *In bonis Chilcott* and *Goldie* v. *Adam*. Here also evidence as to the intentions of the testatrix and the draftsman was admitted, its effect being that, in framing the codicil, the draftsman applied his mind only to some clauses of the first will, but not to all of them. In the absence of any evidence of intention to revoke the intermediate will, there were admitted to probate the codicil, the intermediate will, and those clauses of the first will to whose revision the draftsman had applied his mind.

# LANDLORD AND TENANT NOTEBOOK

## PROTECTION OF SITTING TENANTS

A CORRESPONDENT has suggested that an *obiter dictum* by Scott, L.J., in *Epps* v. *Rothnie* [1945] 1 K.B. 562 (C.A.), to which I last referred on 13th April (90 SOL. J. 172), does not go as far as suggested. The decision in question interpreted the words " has become landlord by purchasing the dwelling-house " (previously discussed in 88 SOL. J. 428; 89 SOL. J. 53 and 366), which occur in para. (*h*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, entitling a court to make an order for possession if it considers it reasonable to make such order, and if " the dwelling-house is reasonably required by the landlord (not being a landlord who has *become landlord by purchasing* the dwelling-house or any interest therein after . . . ) for occupation as a residence for himself, etc." The relevant facts of the case were that the plaintiff had purchased the house empty after the statutory date, had then let it to the defendant, and on the expiration of the tenancy had come reasonably to require it for occupation as a residence for himself. The court held that he was outside the scope of the words italicised. In the course of his judgment, Scott, L.J., said " He [the learned county court judge] took the view, with which I agree, that the object of the exception in para. (*h*) is to protect a sitting tenant from having his house bought over his head, and that it has no application to a case where the owner of a house purchases it after the statutory date at a time when the house is actually empty, and thereafter lets it to a tenant. In my opinion the county court judge's decision was right on this point."

Now, what our correspondent visualises is a case in which A buys, in 1940, a house subject to B's tenancy; B quits, and the house is re-let to C. " It seems quite clear," he contends, " that A became landlord by purchasing since the statutory date, and cannot rely upon para. (*h*); yet C is not a sitting tenant who has had his house purchased over his head."

While I appreciate the force of this argument, I am not prepared to admit its validity. Briefly, I think the fallacy is the assumption that "landlord" in the enactment means " landlord of the house " rather than " landlord under the tenancy."

It was, indeed, part of the argument advanced by the defence in *Epps* v. *Rothnie*, *supra*, that in *Lloyd* v. *Cook* [1929] 1 K.B. 103 (C.A.), " landlord " had been held to mean " owner." But that was for the purpose of s. 2 (1) of the 1923 Act, which effected decontrol, i.e., " Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act." As Scrutton, L.J., put it: " He cannot be, if at that date he has a tenant. If he has then no tenant, he is not *in stricto sensu* a ' landlord.' This seems to me conclusive to show that the term ' landlord ' cannot be used as requiring a contract of tenancy. . . . The word ' landlord ' must be used either in the looser meaning of ' owner ' or in the still looser meaning of a person who at a later stage is going to appear as a landlord contesting with a tenant the terms of his tenancy."

I mention this in order to bring out the contrast between the position dealt with in *Lloyd* v. *Cook* and that adjudicated upon in *Epps* v. *Rothnie* before going into the question to which position that visualised by our correspondent approximates. I will now proceed to probe rather more deeply into the situation to which para. (*h*) of Sched. I to the 1933 Act applies.

It is, I suggest, important to bear in mind that that schedule does not set out a number of causes of action. It is not, strictly speaking, concerned with rights at all; what it does rather is to restore a remedy. The landlord in *Epps* v. *Rothnie* did not *base* his claim on his reasonably requiring the dwelling-house as a residence for himself. What he did was to sue for possession on the ground that the defendant's tenancy had expired; but then found himself *prima facie* deprived of his remedy by the words " No order or judgment for the recovery of possession of any dwelling-house . . . shall be made or given unless . . ." (s. 3 (1)). It follows, in my submission, that whenever the schedule—which authorises a court for the purposes of s. 3 of the Act to make or give an order or judgment without proof of suitable alternative accommodation (where the court considers it reasonable so to do) *if* . . .—speaks of " the landlord " and " the tenant," those expressions denote the parties to the tenancy. Consequently it would not avail C, in the example given, to plead that A became B's landlord of the same house by purchasing it at some earlier date.

Admittedly the position is not entirely clear, and it is possible to propound a further riddle still more difficult to answer: How would the paragraph operate if C had had B's contractual tenancy assigned to him, so that A had never had any right to possession against C till the tenancy expired? My own view is that A would this time be within the exception, because the paragraph, while it contemplates parties to a tenancy agreement, does not speak of them as " the plaintiff " and " the defendant "; and this enables a defendant to set up that the plaintiff did become landlord by purchasing the dwelling-house, meaning by the expression " landlord " not " owner," but " person entitled to the benefit of and subject to the burden of the tenancy agreement the determination of which gave him his cause of action."

And if one considers the objects of the legislation, it may, it is true, be said that A ought not to benefit by the fortuitous circumstance that B quitted; and that, being a person who bought without any justifiable hope of being able to obtain possession, he ought not, if he re-let to C, to be in a better position than he was when B was tenant. But this, I suggest, would imply that A, who may not have reasonably required the house when B left, must be put in a worse position than other landlords who bought tenanted houses and who may have obtained possession not only because their tenants gave up but perhaps because their tenants failed to pay rent; and the Acts are, after all, " for the protection of tenants and not for the penalising of landlords,

# OBITUARY

MR. G. C. V. CANT.

Mr. George Charles Victor Cant, town clerk and clerk of the peace, Dudley, Worcs., died on Saturday, 4th May, aged fifty-nine. He was admitted in 1915.

SIR JESSE HIND

Sir Jesse William Hind, Kt., D.L., solicitor, of Messrs. Wells and Hind, solicitors, of Nottingham, died on Saturday, 4th May, aged eighty. He was admitted in 1891.

MR. K. H. WHEELER

Mr. Kenneth Hale Wheeler, solicitor, of Messrs. Cranfield and Wheeler, solicitors, of St. Ives, Hunts, died on Saturday, 13th April, aged forty-eight. He was admitted in 1924, and had held the office of town clerk of Godmanchester since 1935.

MR. W. J. H. WILLWAY

Mr. William John Harold Willway, solicitor, of Bristol, died recently, aged seventy. He was admitted in 1902.

# TO-DAY AND YESTERDAY

**May 6.**—In February, 1597, the Gray's Inn benchers ordered that Robert Oglethorpe be called to the bar "at such time as he bring a certificate of his performing of his exercises." However he failed to do so and on 6th May, it was directed that an order disabling him from being an utter-barrister be entered.

**May 7.**—In February, 1604, there was a fire in the North Court in Gray's Inn (now the north half of Gray's Inn Square). On 7th May it was ordered that the damage to the chambers of Mr. Bettenham, one of the leading benchers, should be repaired at the expense of the Society. Fire fighters had come from the parish of Christ Church, Newgate Street, and it was ordered that they should be paid 20s. "for loss and waste in their buckets and hooks." Subsequently the gentlemen whose chambers were destroyed were given leave to rebuild to their own liking so long as the first storey was in brick.

**May 8.**—When the Duke of Northumberland made his ill-conceived attempt to thrust Lady Jane Grey upon the throne, Serjeant Edward Saunders, Recorder of Coventry, persuaded the mayor to ignore the orders sent to him and to proclaim Queen Mary. He was very soon rewarded with a judgeship in the Common Pleas and a knighthood. On 8th May, 1557, he became Chief Justice of the King's Bench. Though he was a Roman Catholic, Queen Elizabeth re-appointed him, but it was not long before he had to step down to be Chief Baron of the Exchequer. The reports of Plowden and Dyer bear witness to his learning and industry. He died in 1576 and was buried at Weston-under-Withale.

**May 9.**—On 9th May, 1557, it was ordered by the benchers of the Inner Temple that Sir Thomas Saunders, the Treasurer, "shall during his treasurership have power to compound with debtors of the House and his order and agreement shall be sufficient discharge against this House."

**May 10.**—On 10th May, 1584, the Inner Temple benchers ordered "that no married man be hereafter admitted butler of this House, and if any butler hereafter be married after he is a butler of this House, then he shall lose his office of butlership."

**May 11.**—On 11th May, 1578, the Gray's Inn benchers ordered "for the gutter running from the kitchen through the court, that Mr. Stanhope shall take upon him the covering of the same gutter and the levelling of the court for the preparation of the same and the house to bear the charges thereof and Mr. Edward Stanhope, upon his promise that if the same shall decay or shall be noisesome or shall be thought meet to be open again at any time within this ten years then that the said Edward shall repair and lay open the same in state as the same now is at his own charge." Stanhope then had chambers which he had built in 1570 in the south-east part of "the lower court," now South Square, and, accordingly, it may be deduced that it was through it that the gutter ran. No. 5 is the site of Stanhope's chambers. In the same month he was given leave to erect a building on the south side of the court, along the bottom of the garden of the Bishop Inn. In 1749 there was still a Bishop's Head Court behind No. 4. It ran from Gray's Inn Lane and then turned north at right angles.

**May 12.**—On 12th May, 1596, the Gray's Inn benchers agreed to allow Dr. Croke, the Preacher, £3 6s. 8d. "for his commons in time of his sickness during which time he was absent and did take no commons and yet notwithstanding did provide preachers to supply his place." Croke, a Cambridge man, had previously been Rector of Great Waldingfield in Suffolk. He was Preacher of Gray's Inn from 1581 till his death in 1598, having been appointed on the express recommendation of Lord Burghley. His stipend was £66 13s. 4d. a year, a special tax being levied on the Society to provide it.

### A Riding Judge

Judge H. G. Farrant was a county court judge from 1918 till 1937, and his recent death at the age of eighty-two removes a figure long familiar in the legal world, but even more familiar in the saddle than on the bench. For many years he was one of the most brilliant lights of the Pegasus Club, being in the first batch of thirty-three candidates elected to it at the first general meeting on 9th December, 1895. Among the other names were those of Lopes, L.J., Horace Avory, J. H. Oswald, Q.C., E. H. Carson, Q.C. Farrant was a fine horseman, and when he was elected to the committee in 1901 there began what the historian of the club has called "the Farrant period." He was also to be for many years the club's representative on the Point-to-Point Committee of the Masters of Hounds Association. In that year on a course at Nazeing, in Essex, he began a long series of triumphs in the Pegasus point-to-point by winning the Heavies on his big brown horse, Leicester. Five times he was to ride the winner of the heavyweights, five times that of the lightweights and twice that of the Inns of Court Open Race. In 1903 his winning mount was a notable hunter named Red Hall, a magnificent chestnut, with exceptional bone, and a fine performer, which he rode to victory in race after race. In 1908 Farrant rode him in the Grand National, when he jumped the course without a mistake and finished sixth. As a county court judge in Cambridgeshire he had Newmarket within his jurisdiction.

### In Gray's Inn Place

A memorial plaque in bronze has just been unveiled on the remains of No. 8, Gray's Inn Place, rocket wrecked at the end of the war, where Dr. Sun Yat-sen lived as a political refugee from 1896 to 1898. The charming old seventeenth century houses in that part of the Inn were a sad loss after so much earlier destruction. In the late sixteenth century and for almost a hundred years the site on which they were built was the garden of the mansion known first as Allington House and then as Warwick House, after Robert Rich, second Earl of Warwick, went to live there. The Earl was a privileged member of the Inn, which allowed him to build a special gallery for himself at the east end of the Chapel. He took an early and active part in encouraging colonial ventures in the New World, while at home he played a part in politics which brought him to the front rank of the Puritan party. At the outset of the Civil War he used his position as Admiral of the Fleet to rally the Navy to the Parliament. His grandson married Cromwell's daughter Frances. Towards the end of the century building fashions were taking a new turn. The Elizabethan mansion was demolished and Warwick Court was made. Its garden had always been the property of Gray's Inn, which now granted a building lease of it to the widow of Sir Richard Allibone, one of James II's judges. It was she who caused the houses afterwards known as Nos. 6 to 11, Gray's Inn Place to be erected. At first they remained shut off from the rest of the Society's property by a pair of iron gates, but in the course of the eighteenth century they were incorporated in the Inn proper, and in 1770 an additional watchman was appointed and a watch-house built there for his accommodation. During the war of 1914 the London Welsh Fusiliers had their headquarters at No. 6.

# PARLIAMENTARY NEWS

## HOUSE OF LORDS

Read Second Time :—

Gas Light and Coke Company Bill [H.L.]. [30th April.

Trade Disputes and Trade Unions Bill [H.C.]. [1st May.

Read Third Time :—

London Midland and Scottish Railway Bill [H.L.]. [1st May.

Rotherham Corporation Bill [H.L.]. [30th April.

Rushden District Gas Bill [H.L.]. [30th April.

## HOUSE OF COMMONS

Read First Time :—

Atomic Energy Bill [H.C.].

To provide for the development of atomic energy and the control of such development. [1st May.

London County Council [Money] Bill [H.C.]. [1st May.

Read Third Time :—

Bucks Water Board Bill [H.C.]. [30th April.

Post Office and Telegraph [Money] Bill. [2nd May.

## QUESTIONS TO MINISTERS

### Divorce Proceedings

Mr. Hoy asked the Secretary of State for Scotland to what extent there is delay in regard to divorce proceedings in Scotland.

The Lord Advocate (Mr. G. R. Thomson): I have been asked to reply. While there has been a great increase in divorce actions, particularly on the Poors' Roll, the position has been carefully watched, with the result that the machinery has proved adequate to deal with it and there is no undue delay. This has been rendered possible by the willing co-operation of the court, the legal profession and the Services legal aid sections. [30th April.

# ALLIANCE ASSURANCE COMPANY, LIMITED

## VERY SATISFACTORY RESULTS

The Annual General Court of the members of the Alliance Assurance Company, Limited, will be held at the offices of the Company on 22nd May, 1946.

The following is an extract from the review by the chairman, Mr. Richard Durant Trotter, circulated with the report and accounts :—

### Life Department

In the life department, the net new business completed during the year amounted to £1,761,499, in comparison with £1,399,439 in the previous year and £1,210,839 for 1943. This expansion is still continuing.

One result of the end of the war has been that we have found is possible to revise our requirements as regards aviation and war risks, with the result that we are now granting life policies, including these risks, without extra premium for civilian male lives aged thirty or more at entry, provided that they are not likely to fly extensively as fare-paying passengers or otherwise to engage in aviation. Female lives of any age at entry are treated similarly. For other male proposers our normal procedure is to include, free of extra charge, war risks incurred on land in Great Britain and (unless the person concerned is likely to fly extensively) aviation risks run as a fare-paying passenger by a regular air line or service.

At the close of the year, the " Alliance " life and annuity funds amounted to £23,689,711 in comparison with £23,415,196 on 31st December, 1944.

### Fire Department

In the fire department I have pleasure in reporting that the net premium income has further increased to £2,685,215, which is £127,412 more than it was in 1944.

The claims and contributions to fire brigades show an increase, at £959,251, as compared with £775,953, but after adjusting the reserves for unexpired risks the sum of £516,079 has been carried to profit and loss, which I think you will agree is a very satisfactory result, particularly bearing in mind the fact that fire losses in this country were generally heavier than in 1944 and that the cost of individual claims has increased as a result of enhanced values and increased cost of repairs. In this connection I cannot over emphasise the importance of proper attention being given by clients of the company, to the amounts for which they insure their property so that should claims arise they are adequately protected.

### Accident Department

In the accident department the net premiums, amounting to £1,419,441, show an increase of £104,250 over those of 1944.

The results of the year, after adjusting the reserves for unexpired risks, disclose a surplus amounting to £174,794, which has been carried to profit and loss account.

### Marine Department

In the marine department we have now closed the underwriting account for the year 1943. This produced a surplus of £326,611, which is substantially in excess of the figure for the 1942 account. After setting aside £64,697 to meet further claims, a balance of £261,914 has been carried to profit and loss. The premium income in the department, at £921,468, is less by £124,276 than the premiums for 1944.

The trustee department has shown further expansion during the year, but I would again ask you to use your influence in supporting this part of our activities.

We have continued to support the Government loans and during the year £2,035,000 was taken up.

The following appropriations have been made from the profit and loss account:—£75,000 to writing down of premises; £50,000 to the staff pension fund; and we have increased our contribution to the widows' and orphans' fund by £25,000.

The total number of the staff of the " Alliance " and associated offices who have been on Service is 876. Our very sincere sympathy is extended to the relatives of nineteen of our staff who have lost their lives on active service since my last review, making a total of seventy-six officials who have given their lives for their country. I have pleasure, however, in reporting that twenty-four members of the staff were decorated for acts of gallantry and devotion to duty, and in addition twenty-two have been mentioned in despatches.

Finally, I think you will agree with me that the results of the year's business are very satisfactory.

# CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

### Laws Delays

Sir,—Delays in the Land Registry are not the only ones causing grave inconvenience and loss to clients.

I have before me papers in a probate case which show that the Estate Duty Office is not free from blame.

The estate duty affidavit was sent to Llandudno on the 20th March and bears the E.D.O. stamps " recd. 22 Mar 1946," " Arithmetic 26 Mar 1946." On the 2nd April we wrote asking for expedition; on the 12th April the assessed affidavit was received here with our letter attached and a pink slip "immediate" pinned to it and a covering letter dated 8th apologising for delay. It took us six days (including a Sunday) to get the duty cheque signed by two executors in different country addresses, so that it was delayed by the Easter holidays. The receipted affidavit has been received only to-day. Thus fourteen days less five in this office and five for Easter, i.e., thirty-four days, have been taken over work which before the war took a week and last year about a fortnight.

It would be interesting to know what happened to the papers between the 26th March and the 11th April, and how much longer they would have taken if we had not written and got them marked " immediate."

London, W.1. M. C. BATTEN.

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### The National Health Service Bill

Sir,—The article by " Conveyancer " in your issue of 20th April, at p. 182, contains a great deal of criticism that is not justified, and does not stress the points which can, very properly, be criticised.

The Government is taking over the voluntary hospitals, including buildings, contents and endowments (like " Conveyancer," I say nothing on the merits of this), and will use these assets to provide hospital services; that is for the same general charitable purpose for which they have been and were intended to be used. The fundamental change is not one of user but of trustee. The fact that the Exchequer will supplement the funds as necessary makes no difference provided the funds are not used for purposes other than the provision of hospital services.

The comparison to the confiscation of monastic property is fantastic. The Government does not intend using the hospital property for the enrichment of its supporters or even for purposes essentially different from those for which they were intended. " Conveyancer " suggests that the State should have bought the hospital properties and that the purchase-money and the endowments should have been left to be applied for " other suitable charitable uses." Now this would have the exact result which he seeks to avoid; it would make it certain that the funds were not used for anything approaching the purposes for which they were given, for there will be no other hospitals to benefit.

Where the Bill does cut across the intentions of the various donors is in transferring the endowments to a central fund for re-allocation. This is not essential to the scheme; it is designed to relieve the State of part of the burden of building new and modernising the poorer hospitals; and should be resisted. A testator should be able to give money to a specific hospital and know it will be used for that hospital. He will derive little satisfaction from leaving money to a Regional Hospital Board.

London, W.C.2. J. STUART JOHNSTONE.

" Conveyancer " writes:—

The Bill lays on the Minister the duty of providing " hospital services . . . as he considers necessary to meet all reasonable requirements " (cl. 3). It vests in him the hospital buildings, equipment and endowments " free of any trust " (cl. 6 (4) and cl. 7 (4)). This is the exact opposite of the property being used for the same charitable purpose with the Exchequer supplementing it. Of course, no one could object to that.

I did not suggest that the Government propose to use the confiscated property to enrich their supporters, but to enrich the Exchequer; and I do not believe that the average testator who leaves his money to a voluntary hospital would prefer to feel that he has enriched the Exchequer then to have his money transferred, on the abolition of voluntary hospitals, to a home for aged seamen or orphan children. The essence of charity is surely that it provides something beneficial that would be otherwise left undone. I certainly deplore that testators can no longer leave money to particular non-teaching hospitals. But that is the core of the Government's scheme, which makes the provision of hospitals a national service.

# NOTES OF CASES

## COURT OF APPEAL

### *In re* Kitson & Co., Ltd.

Lord Greene, M.R., Morton and Tucker, L.JJ.
15th February, 1946

*Company—Winding up—Allegation that company's substratum gone—Company's business sold—Proposal to purchase another business—Companies Act*, 1929 (19 *Geo.* 5, *c.* 23), *s.* 168 (6).

K. Ltd. was incorporated in 1899. The objects of the company were stated in cl. 3 of its memorandum to be: (1) To acquire and take over as a going concern the business of K. & Co.; (2) to carry on the business of locomotive engine manufacturers, ironfounders, mechanical engineers, etc. The company carried on the business of K. & Co. until July, 1945, when that business was sold and assigned to a purchaser. In July the then directors passed a resolution to discontinue the company's business and to invest the money in hand in certain shares. That resolution was subsequently withdrawn as the result of certain proceedings in the Chancery Division. The present directors subsequently entered into a provisional agreement to purchase the business of B. & Co., Ltd., which was a subsidiary company of K. Ltd., being a similar business to that of K. & Co. This petition for the winding up of the company was presented by certain shareholders on the ground that its substratum had gone. Uthwatt, J., made an order under s. 168 (6) of the Companies Act, 1929, directing the compulsory winding up of the company on the ground that it was just and equitable that the company should be wound up. The company appealed.

LORD GREENE, M.R., said that the first argument for the respondents was that the predominant object of the company was to carry on the business of K. & Co. mentioned in cl. 3 (1) of the memorandum, and that the objects in cl. 3 (2) were merely subsidiary, with the result that the sale of the business of K. & Co. destroyed the substratum. In his opinion the main and paramount object of this company was to carry on an engineering business of a general kind and he could not construe this memorandum as limiting the paramount object and restricting the contemplated adventure of the shareholders to the carrying on of the business of K. & Co. It was impossible to limit the paramount object of this company to the specific business of K. & Co. so as to lead to the result that as soon as that business was sold the substratum of the company had gone. The position must be looked at on the footing that the main and paramount object of the company was to carry on an engineering business. If the agreement had gone through and the company had carried on the business of B., which it proposed to acquire, it would be impossible to say that the substratum of the company had gone. The winding-up order had supervened. Whatever the intention of the directors had been once, it was competent for them, or the shareholders, to change their minds. This they had done. The appeal must be allowed.

MORTON and TUCKER, L.JJ., agreed.

COUNSEL: *J. B. Lindon*, K.C., and *T. M. Shelford*; *Upjohn*, K.C., and *C. G. A. Cowan*.

SOLICITORS: *Capel Cure, Glynn, Barton & Co.*; *Hicks, Arnold & Co.*

[Reported by Miss B. A BICKNELL, Barrister-at-Law.]

### *In re* F. de Jong & Co., Ltd.

Lord Greene, M.R., Morton and Somervell, L.JJ.
14th March, 1946

*Company—Winding up—Preference shareholders—Dividends in arrear—Whether entitled to payment after winding up.*

Appeal from a decision of Cohen, J.

F., Ltd., was incorporated in 1905 with a capital of £25,000, divided into 10,000 preference shares of £1 each and 15,000 ordinary shares of £1 each; 5,006 preference shares had been issued and all the ordinary shares. The company's articles of association provided by reg. 15: " The said preference shares shall carry the right to a fixed cumulative preferential dividend at the rate of 6 per cent. per annum on the capital for the time being paid up thereon respectively and shall have priority as to dividend and capital over the other shares in the capital for the time being, but shall not carry any further right to participation in profits or assets." No dividend had been paid on the preference shares since the 30th June, 1940. A special resolution was passed for the winding up of the company on the 30th May, 1944. The liquidator, having paid all the creditors and returned their capital to the preference shareholders, had a balance of £3,000 in hand. This summons asked whether the holders of the preference shares

were entitled to receive out of the net surplus assets of the company a sum equivalent to the arrears of the cumulative preferential dividend accrued since the 30th June, 1940. Cohen, J., decided in favour of the preference shareholders. The ordinary shareholders appealed.

MORTON, L.J., said that *prima facie* and in the absence of words making provision for it in the memorandum and articles of association, cumulative preference dividends were not ordinarily payable out of the assets in a winding up. It was a matter of construction whether the memorandum or articles provided that such arrears should be payable in a winding up. The vital sentence in reg. 15 fell into three parts. The first part dealt with dividends payable out of the profits of the company while it was a going concern. The next part was: " and shall have priority as to dividend and capital over the other shares in the capital for the time being." That portion of the sentence referred to winding up. Unless this were so, there was no provision at all informing the preference shareholders what their rights in a winding up were to be. The third part of the sentence ran: " but shall not carry any further right to participate in the profits or assets." That passage rounded off the description of the rights of the preference shareholders and prevented them from having, first, any more than their fixed cumulative preferential dividend out of the profits of the company, and, secondly, any more than the arrears of dividend and return of capital in a winding up. They had been referred to two recent cases: *In re Walter Symons, Ltd.* [1934] Ch. 308, and *In re Wood, Skinner & Co., Ltd.* [1944] Ch. 323, but little assistance was gained from considering articles having different language. Here the words " shall have priority as to dividend " must refer to a winding up, since priority as to dividend while the company was a going concern had already been provided for. The appeal should be dismissed.

LORD GREENE, M.R., and SOMERVELL, L.J., agreed.

COUNSEL: *Maurice Berkeley; Pennycuick; P. D. D. Divine.*

SOLICITORS: *Leonard Tubbs & Co.; Gerrish & Foster.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## CHANCERY DIVISION

### *In re* Chichester; Pelham *v.* Chichester

Evershed, J. 4th April, 1946

*Will—Nuncupative will made by soldier on actual military service—Whether will exercises special power of appointment—Wills Act,* 1837 (1 *Vict. c.* 26), *s.* 11.

Adjourned summons.

The 8th Earl of C, being on actual military service, saw his solicitor on 28th January, 1944, and gave him verbal instructions to draft his will. At this date the 8th earl was tenant for life under his father's, the 6th Earl's, will, and as such had power to charge personalty subject to the trusts of that will with a jointure for his wife and with portions for his younger children. The 8th Earl had a wife and an infant daughter living, and his wife was then *enciente*. The 8th Earl was killed on 21st February, 1944, before he had considered the draft will which his solicitor had prepared pursuant to his instructions. The solicitor had taken a note at the time the verbal instructions were given to him, and on 25th July, 1945, probate was granted of that note. It contained the following: " He, Lord C, wants create jointure of £1,000 p.a. in favour of his wife, but this could only be £500 during his mother's lifetime." " The residue, whether there is a son or not, he wishes to go to his children equally, his idea being that his daughter shall be provided for to the best of his ability." By this summons the trustees of the 6th Earl's will asked whether the will of the 8th Earl had operated as an exercise, or partial exercise, of the power to appoint a jointure and portions. The defendants to the summons were the 8th Earl's widow, his infant daughter and his son, who had been born after his death. The Wills Act, 1837, by s. 11, provides that any soldier in actual military service may dispose of personal estate as he might have done before the making of the Act.

EVERSHED, J., said that he thought that the effect of s. 11 was to give a soldier power not only by nuncupative will to dispose of his own absolute property, but also to exercise powers of appointment, general or special, over personal property. He thought that emerged from the decisions in *In re Wernher* [1918] 2 Ch. 82, and *Godman* v. *Godman* [1920] P. 261. The will recorded the 8th Earl's intention to exercise the power to jointure, but he held the will did not exercise the power to raise portions.

COUNSEL: *A. C. Nesbitt; Jenkins*, K.C., and *L. M. Jopling; Neville Gray*, K.C., and *Ungoed-Thomas.*

SOLICITORS: *Markby, Stewart & Wadesons.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

## KING'S BENCH DIVISION

### Manches *v.* Trimborn

Hallett, J. 30th January, 1946

*Contract—Capacity—Cheque in settlement of extended transaction—Drawer incapable of understanding transaction—Action on cheque—Degree of mental incapacity required to establish defence.*

Action tried by Hallett, J.

The plaintiff claimed £1,300 from the defendant on a cheque in his favour for that amount signed by her and dated 31st January, 1945. The defendant, a widow eighty-six years of age, had become friendly with B, a neighbour, and during 1941 and 1942 had paid him sums amounting to more than £5,000. The £1,300 for which the defendant drew the cheque now sued upon represented a sum payable by B to the plaintiff as part of an exceedingly involved transaction or series of transactions the details of which are immaterial for the purposes of this report. The cheque having been dishonoured on presentation, the plaintiff brought this action. The defendant pleaded that she was suffering from senile degeneration when she signed the cheque, and was to the plaintiff's knowledge incapable of understanding that she was drawing a cheque in his favour.

HALLETT, J., said that the first question for decision was the precise degree of mental incapacity which the defendant must prove in order to escape liability on her cheque. It was contended for the plaintiff that once it appeared (*a*) that the defendant was, or might have been, capable at the material time of understanding that she was signing a cheque; (*b*) that the effect of signing it would be to transfer the sum specified to the person named as payee; and (*c*) that the transfer would be for the benefit of B and not herself, the defence of mental incapacity must fail. It was contended for the defendant that, if it could be established that, by reason of mental incapacity, the defendant was at the material time incapable of understanding in substance the true nature and effect of the transaction in which the cheque played a part, that would be sufficient to relieve her of liability on the cheque if the incapacity were known to the plaintiff at the material time. The degree of mental incapacity necessary to render consent real differed according to the nature of the transaction. In criminal matters it was a low degree, in testamentary matters a high one. There might be many different degrees between those extremes. In his (his lordship's) opinion, in the present case the defence must establish such a degree of incapacity as would prevent the defendant from understanding substantially the nature and effect of the transaction into which she was entering, and of which the cheque formed part. In his opinion it would be taking too narrow a view to hold that the transaction which she must be capable of understanding was the mere signing of the cheque. His lordship, having found as a fact that the defendant was incapable of understanding the true nature and effect of the transaction or series of transactions of which the cheque formed part, and that the plaintiff was at the material time aware of that mental incapacity, gave judgment for the defendant.

COUNSEL: *Slade*, K.C., and *Hawser; Valentine Holmes*, K.C., and *Milmo.*

SOLICITORS: *Manches & Co.; Arram, Fairfield & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### Powell *v.* May

Lord Goddard, C.J., Humphreys and Henn Collins, JJ. 15th February, 1946

*Local government—Bye-law prohibiting bookmaking at racing track—Validity—Street Betting Act,* 1906 (6 *Edw.* 7, *c.* 43), *s.* 1—*Betting and Lotteries Act,* 1934 (24 & 25 *Geo.* 5, *c.* 58), *s.* 2.

Case stated by Glamorganshire Quarter Sessions.

The appellant, a bookmaker, was charged with contravening bye-law No. 7 made by Glamorganshire County Council, which provided: " No person shall frequent and use any street or other public place either on behalf of himself or any other person for the purpose of bookmaking or betting or wagering or agreeing to bet or wager or paying or receiving or settling bets." " Public place " was defined as including " . . . any open space to which the public have access for the time being." On the 22nd July, 1944, a race meeting was held in a field at Laleston, which was neither an approved racecourse nor a licensed track. The racing was confined to horseracing, and notice had been given to the chief constable of the county in accordance with s. 2 of the Betting and Lotteries Act, 1934, that it was intended to permit bookmaking on the track. Bookmaking had been carried on in the field on only one day during the previous twelve months. The appellant, among other bookmakers, was present at the track and carried on there the business of bookmaking. No

notice was exhibited near the only entrance to the field, which was otherwise totally enclosed, prohibiting betting. The public were granted access to the field on payment of 2s. 6d. By s. 1 (1) of the Street Betting Act, 1906, it is an offence for any person to frequent " public places . . . for the purpose of bookmaking . . . " By s. 1 (4), " public place " includes " . . . every enclosed place . . . to which the public have a restricted right of access . . . " but betting in such a place is only made unlawful for the purposes of the section if a notice prohibiting it is " conspicuously exhibited " near the entrance. By s. 2 (1) of the Betting and Lotteries Act, 1934, " bookmaking shall not be carried on on any track unless the occupier of the track holds a licence authorising the provision of betting facilities on that track " ; but that provision is not to apply in the case of a track where bookmaking has not been carried on more than a specified number of times and notice has been given to the police of the intention to permit bookmaking there. (*Cur. adv. vult.*)

LORD GODDARD, C.J., reading the judgment of the court, said that bye-laws in form similar to that in question had been upheld by the courts, but before the Act of 1906 had been passed. A bye-law repugnant to the general law was invalid. Obviously it could not permit what a statute expressly forbade, or forbid what a statute expressly permitted, though it could naturally forbid what would otherwise be permissible at common law. A statute seldom enacted expressly that something should be lawful, but it often, while making a particular thing unlawful, provided that that thing might nevertheless be done if certain conditions were observed. The Acts of 1906 and 1934 having provided that bookmaking should be lawful on a track if certain conditions were observed, a bye-law which provided that the observance of those conditions should be no defence to a charge under it must be repugnant to the general law, for it deprived the person charged of the defences which the Acts gave him. That being the effect of this bye-law, it was invalid. The appeal must be allowed and the conviction quashed.

COUNSEL : *Beyfus*, K.C., and *Roger Willis ; Sutton*, K.C., and *Carey Evans*.

SOLICITORS : *Field, Roscoe & Co.*, for *A. Frank Hill & Co. ; Torr & Co.*, for *Richard John*, Cardiff.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL

**R. *v.* Bateman**

Humphreys, Lewis and Henn Collins, JJ.
24th January, 1946

*Criminal law—Procedure—Unsatisfactory witness—Treatment by tribunal.*

Appeal from conviction.

The appellant was convicted at the Central Criminal Court of warehouse-breaking and causing grievous bodily harm. His defence was that at the material time he was playing cards at a private house with friends. Three of them, women, were interviewed by the police and were called as witnesses for the prosecution. Leave to appeal was given owing to their treatment in the witness-box by the Commissioner.

HUMPHREYS, J., giving the judgment of the court, said that one of the witnesses in question, on being asked a number of questions about the time at which the apepllant was at the house, began, with apparent frankness, by saying that she was " no good at times or dates." Her evidence was completely unsatisfactory for the purpose of proving anything. The commissioner had formed the opinion that she could give much more satisfactory evidence if she wished, and he had cross-examined her and treated her as a thoroughly disreputable liar. It must not be forgotten by those presiding at criminal trials that witnesses were entitled to be treated with courtesy and politeness unless and until they showed some sign of refusing to assist the court. It was not the duty of any judge to start by saying anything designed to force the witness to say something which he really could not say. The result of the commissioner's questioning was that, when his cross-examination was taken up by counsel for the prosecution, the woman was induced to give seven or eight different times as being those when the appellant went to the house. Judges were fully entitled, if they formed the opinion that a witness was not trying to help the court, to admonish him that he must tell the truth; but that must not be done until the witness had given some indication that he was not trying to tell the truth. The mere fact that a witness could not fix the time was no reason for treating him as this witness had been treated. The observations made in *R.* v. *Gilson and Cohen* (1944), 29 Cr. App. Rep. 174, at p. 181, in which the court adopted the words used in *R.* v. *Cain* (1936), 25 Cr. App. Rep. 204, at p. 205, were apposite. The court would adopt those observations and apply them to any witness, whether called by the prosecution or the defence. The treatment of a person as a hostile witness was regulated by the Criminal Evidence Act, 1865. Counsel for the prosecution had not, he said, felt justified in asking the judge to say that the woman was a hostile witness. It was so necessary for the doing of justice that witnesses, whether for the prosecution or for the defence, should be allowed to tell their stories, and that it should then be left to the jury, subject to the comments of the judge, to say whom they believed. The question was whether the court could disregard the unfortunate incident with regard to the witness. The result of all that happened with regard to the women at the tea party was that the whole of that evidence became entirely unreliable, and the jury had probably so regarded it. That being so, it could be eliminated. The rest of the case was so strong that the court could apply the proviso to s. 4 of the Criminal Appeal Act, 1907, and say that there had certainly been no miscarriage of justice. The appeal was dismissed.

COUNSEL : *Alban Gordon ; Elam.*

SOLICITORS : *Registrar of Court of Criminal Appeal ; Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# REVIEW

**Short forms of Wills adapted to the requirements of the middle classes and farmers.** By HENRY BRIGHOUSE, Solicitor. Fifth Edition. With the Inheritance (Family Provision) Act, 1938, annotated by B. A. BICKNELL, LL.B., Barrister-at-Law. 1945. London : Sweet & Maxwell, Ltd. 15s. net.

We have read through this successful little book with interest. We feel that the most useful portions of it are Miss Bicknell's notes on the Inheritance (Family Provision) Act, 1938, and the forms of wills for farmers. The notes commend themselves to us as fully stating the effect of the few reported cases on a very difficult piece of legislation, and the farmers' wills for their novelty. We feel much more moderate enthusiasm for the part of the book about general forms of wills. We do not think that it can really be a substitute for the big precedent books with their full citation of authority, and we are not even sure that the forms are noticeably shorter than the conventional ones. We also feel that the user ought to be warned that the rights of residence created by the forms on pp. 14 and 58 would make the premises settled land, and that the gift among brothers and sisters on p. 19 would import the statutory trusts. The expression " movable chattels " on p. 18 seems to have no advantage over " personal chattels as defined by the Ad. of E. A. 1925 " ; though shorter its meaning is less clear. The will for a testator *in extremis* is surely liable to lead to trouble by providing that the executors are to follow the under-written instructions, with power at discretion to depart from them. Is not such a disposition void for uncertainty ? Again, the gift of annuities for the maintenance of children (p. 42) seems open to criticism in providing that the widow shall be " entitled " to receive the annuity of each minor. Such a gift would presumably make the annuity the income of the mother and unnecessarily increase the liability for income tax.

We feel therefore that, on the occasion of the sixth edition, the editor might be wise to reconsider the first sixty pages of the book.

# RULES AND ORDERS

S.R. & O. 1946, No. 570/L.10.

LANDLORD AND TENANT.

TENANCY AGREEMENTS.

THE TENANCY AGREEMENTS (PEACE TREATIES) ORDER, 1946.

At the Court at Buckingham Palace, the 18th day of April, 1946.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by subsection (2) of section two of the Validation of War-Time Leases Act, 1944,* it is provided—

(*a*) that His Majesty may by order in Council declare, among other things, what date is to be treated for the purposes of any tenancy agreement as the date of any event which occurs, or which the parties considered likely to occur, on or in connection with the end of the war or of hostilities whether as respects all or any States or all or any theatres of war, and which appears to His Majesty to require definition for the purposes of tenancy agreements ; and

(*b*) that every such agreement shall be construed accordingly, unless the context requires, or it is shown by admissible evidence, that it should be otherwise construed ;

Now, therefore, His Majesty, by and with the advice of the Privy Council, is pleased to order and it is hereby ordered as follows :—

1. For the purpose of the construction of any tenancy agreement—

(*a*) the ninth day of May, nineteen hundred and forty-six, shall (unless the context requires, or it is shown by admissible evidence that the agreement should be otherwise construed) be treated as the date of the conclusion of a peace treaty with each of the States in Europe with which His Majesty has been at war at any time since the third day of September, nineteen hundred and thirty-nine; and

(*b*) the fifteenth day of August, nineteen hundred and forty-six, shall (unless the context requires, or it is shown by admissible evidence that the agreement should be otherwise construed) be treated as the date of the conclusion of a peace treaty with Japan:

2. This Order may be cited as the Tenancy Agreements (Peace Treaties) Order, 1946.

*E. C. E. Leadbitter.*

* 7 & 8 Geo 6, c. 34

S.R. & O., 1946, No. 607/L.7

## SUPREME COURT, ENGLAND

### PROCEDURE

### THE RULES OF THE SUPREME COURT (No. 2), 1946

DATED APRIL 25, 1946

I, William Allen Baron Jowitt, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†—

1. The following Order shall be substituted for Order LVc:—

"ORDER LVc

PROCEEDINGS UNDER THE WAR DAMAGE ACT, 1943, THE WAR DAMAGE (VALUATION APPEALS) ACT, 1945, AND THE ACQUISITION OF LAND (COMPENSATION FOR WAR DAMAGED LAND) RULES, 1945.

1. *General.*]—Proceedings in the High Court for the enforcement of any right conferred by the War Damage Act, 1943 (in this Order referred to as "the Principal Act") shall be assigned to the Chancery Division and shall, unless the Court or a judge otherwise orders, be heard and determined by a judge nominated by the Lord Chancellor for the purposes of the Principal Act.

2. *Appeal to the High Court from a determination of the Commission.*]—(1) An appeal to the High Court under section 32 (3) or 69 (7) or 74 (4) of the Principal Act, or under Rule 5 (3) of the Acquisition of Land (Compensation for War Damaged Land) Rules, 1945, against a determination of the War Damage Commission (in this Order referred to as "the Commission") shall be instituted by originating notice of motion.

(2) The appellant shall file the notice of motion in the Action Department of the Central Office within sixty days of the receipt by the said appellant of the determination, and shall state in the notice the question of law on which it is desired to appeal, the grounds of the appeal and the date on which the determination was received.

(3) The notice of motion shall be served on the Commission at least six weeks before the time fixed by the notice for making the motion.

(4) The Commission shall, unless the court or a judge upon the application of the Commission otherwise directs, within twenty-eight days of the service of the notice of motion or such further time as the court or a judge may allow, state a case setting forth the facts on which their determination was based and shall file the case in the said Action Department and shall serve a copy thereof upon the appellant.

(5) The notice of motion together with a copy of the case shall be served by the appellant upon such of the persons interested in the subject-matter of the appeal as the court or a judge may direct and for that purpose the appellant shall, unless the court or a judge otherwise directs, within seven days of the service of a copy of the case upon him, issue a summons returnable at the chambers of the judge.

(6) Any party (including any interested person who has been served under the last preceding paragraph of this Rule with the notice of motion and copy of the case) may issue a summons returnable at the chambers of the judge for an order or direction on any matter of procedure.

(7) The appeal may, notwithstanding anything in section 63 of the Supreme Court of Judicature (Consolidation) Act, 1925, be heard and determined by a single judge.

(8) At the hearing of the appeal the court shall have power, if it thinks fit, to order the case to be sent back to the Commission for amendment or, with the consent of the Commission, to amend the case.

(9) The decision of the court shall be embodied in an order and a copy of the order shall be sent by the proper officer to the Commission.

(10) The ordinary practice and rules of the Chancery Division shall, in so far as the same are applicable and are not inconsistent with this Order, apply to appeals under the enactments and Rule mentioned in paragraph (1) of this Rule.

3. *Case stated for opinion of High Court under 9 & 10 Geo. 6, c. 8.*]—(1) Any person who in accordance with the proviso to pagaraph 11 of the Schedule to the War Damage (Valuation Appeals) Act, 1945, has declared to a Tribunal selected under the provisions of the last-mentioned Act his dissatisfaction with a determination of the tribunal on an appeal under section 32 (2) of the Principal Act or on a reference under subsections (4) or (5) of section 32 of the Principal Act as being erroneous in point of law may, within twenty-eight days of having so declared, by notice in writing served on the tribunal, require the tribunal to state and sign a case for the opinion of the High Court.

(2) The notice shall state the question or questions of law in respect whereof it is alleged that the determination of the tribunal was erroneous.

(3) Service of the notice on the tribunal shall be effected by delivering or sending the notice to the Registrar of the War Damage Valuation Appeals Panel at Queen Anne's Chambers, 28, Broadway, London, S.W.1, or at the address for the time being of the said Panel.

(4) The procedure and practice of the Chancery Division relating to a special case stated for the decision of the High Court with respect to a question of law under section 9 (1) (*a*) of the Arbitration Act, 1934, shall apply to a case stated for the opinion of the High Court under the said proviso.

4. *Payment into Court under s. 33 (1) of Principal Act.*]—(1) Where the Commission desire to make a payment into the Supreme Court under section 33 (1) of the Principal Act in respect of war damage to a hereditament they shall cause an affidavit to be made and filed in the Chancery Division intituled in the matter of the Principal Act and in the matter of the hereditament, and setting forth therein—

(*a*) short particulars of the hereditament;

(*b*) the name and address of any person who has claimed a payment in respect of war damage to the hereditament or a share of such payment; and

(*c*) the grounds on which the Commission desire to make the payment into Court.

(2) There shall be annexed to the affidavit a Lodgment Schedule setting forth—

(*a*) the fact that the persons desiring to pay the money into Court are the Commission;

(*b*) the ledger credit to which the money is to be credited; and

(*c*) the amount to be lodged.

(3) The ledger credit shall be intituled in the matter of the Principal Act and in the matter of the hereditament.

(4) An office copy of the Lodgment Schedule shall be left with the Accountant-General.

(5) The Commission shall, so far as may be practicable, give notice of the payment into court by prepaid letter through the post addressed to any person who has claimed an interest in the whole or any part of the amount paid in, or who appears to the Commission to be interested therein.

(6) An application to deal with the money so paid in or with the income thereof may be made by originating summons intituled in the same manner as the affidavit on which the money was paid in.

(7) The summons shall be served on, or such other notice or intimation thereof shall be given to, such persons, if any, as the court or judge may direct.

5. *Direction for hearing by nominated judge under s. 4 (2) of Principal Act.*]—(1) If in any proceedings in any Division of the High Court an issue arises which involves the determination of the construction or effect of the Principal Act, or of the War Damage (Valuation Appeals) Act, 1945, the court or a judge thereof may at any stage of the proceedings, with or without an application for the purpose, direct that the proceedings be heard and determined by a judge nominated by the Lord Chancellor for the purposes of the Principal Act, or, as the case may require, by a court of which at least one member is a judge nominated as aforesaid.

(2) An application for a direction under this Rule may be made in accordance with the procedure and practice relating to interlocutory applications in the Division in which the proceedings are pending.

6. *Service on the Commission.*]—Service of any document required or authorised to be served on the Commission under this Order shall be effected by delivering or sending the document to the Treasury Solicitor at his office at Storey's Gate, St. James' Park, London, S.W.1."

2. In Rule 5 of Order LIX the following paragraph shall be inserted after paragraph (2) and shall stand as paragraph (2A)—

"(2A.) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the notice of motion or summons shall be filed before the notice or summons is put in the list for hearing, and, if any person who ought to be served under the provisions of the last preceding paragraph has not been served, the affidavit shall state that fact and the reason why service has not been effected, and the affidavit shall be before the Court on the hearing of the motion or summons."

3. In paragraph (*c*) of Rule 7 of Order LXVI (which prescribes the rate at which printed copies of documents furnished by one party to any other party are to be paid for by that other party) "2d." shall be substituted for "1½d."

4. In Appendix N to the Rules of the Supreme Court, in Fee 106 (which relates to the maximum amount per folio which may be allowed on taxation for printing pleadings, etc.), "3s. 4d." shall be substituted for "3s. 1d", in both the Higher Scale and the Lower Scale.

5. These Rules may be cited as the Rules of the Supreme Court (No. 2), 1946.

Dated the twenty-fifth day of April, 1946. *Jowitt*, C.

We concur. *Goddard*, C.J.
*Greene*, M.R.

* 2&3 Geo. 5. c. 78. † 15 & 16 Geo. 5. c. 49.

# RECENT LEGISLATION

## Statutory Rules and Orders, 1946

No. 618. **Civilian Clothing** Order. April 25.
No. 609. **Control of Rates of Hire of Plant** (Exemption) Order. April 24.
No. 617/L.9. **Crown Office Fees** (Welsh District Notaries) Order. April 23.
No. 567. **Government of Burma** (Governor's Emergency Allowances, Repair of Furnishings) Order in Council. April 18.
No. 568. **Government of India** (Shan States Federal Fund) Order in Council. April 18.
No. 566. Government of India (Adaptation of Acts of Parliament) (Amendment) Order in Council. April 18.
No. 569. Government of India (High Court Judges) (Amendment) Order in Council. April 18.
No. 585. **Hire-purchase and Credit Sale Agreements** (Control) (No. 2) Order. April 26.
No. 608/L.8. **Matrimonial Causes** (Amendment) Rules. April 24.
No. 572. **National Fire Service** (Preservation of Pensions) Regulations. April 18.
No. 557. **Railways** (Revocation of Transport Restrictions) Directions. April 17.
No. 607/L.7. **Rules of the Supreme Court** (No. 2). April 25. (p. 225, *ante*.)
No. 606. **Safeguarding of Industries** (Exemption) (No. 2) Order. April 26.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

# NOTES AND NEWS

### Honours and Appointments

The Lord Chancellor has appointed Mr. Michael Rowe, C.B.E., K.C., to be a member of the General Claims Tribunal in the place of Mr. Lionel Cohen, K.C. (now Lord Justice Cohen), who has resigned his membership of the Tribunal. It is understood that this is not a full-time appointment precluding Mr. Rowe from continuing his practice at the Bar.

Lieutenant-Colonel Charles Edward J. Freer has been appointed deputy chairman of Leicestershire Quarter Sessions.

Mr. Conor Maguire, President of the High Court, Dublin, has been appointed Chief Justice of the Supreme Court of Eire.

Mr. H. A. Lemon, Assistant to Solicitor, Southern Railway, has been appointed Assistant Solicitor (Conveyancing) in succession to Mr. J. W. Watkin, who has retired. Mr. Lemon was admitted in 1912.

### Notes

The Lord Chancellor has approved the appointment of twenty-three new magistrates for Middlesex.

The Judicial Committee of the Privy Council began their Easter Sittings with a list of nineteen appeals; one each from Canada, Malta and West Africa, and fifteen from India, and one prize appeal. Eight judgments await delivery.

The Union Society are holding the following meetings on the 15th and 22nd May, and the subjects for debate are as follows: Wednesday, 15th May: "That the Government should seek to establish forthwith an association of the Western European democracies." *Proposer*, Mr. Charles Burke; *Opposer*, Mr. Eric Moses. Wednesday, 22nd May: "That the economic programme of the Labour Party involves a sacrifice of individual rights too great to be tolerated by a civilised community." *Proposer*, Mr. L. G. Scarman; *Opposer*, Major R. N. Hales.

## ESTATE DUTY

### Delivery of Inland Revenue Affidavits

The Board of Inland Revenue intimate that, following the resolutions passed by the Committee of Ways and Means of the House of Commons, it is desirable, in the case of persons dying on or after the 10th April, 1946, that the following practice should be followed:—

(1) The same forms of Inland Revenue Affidavit as for deaths before the 10th April, 1946, should continue to be used, although no estate duty may be payable. In particular, the form B–2 or B–4, as the case may be, should be used when the reduced court fees of 15s. are appropriate.

(2) Where the *gross* value of the estate included in the Inland Revenue Affidavit is under £1,000, and a domicile outside Great Britain is not claimed, the Inland Revenue Affidavit may be lodged at the Principal Probate Registry or a District Probate Registry without prior reference to the Estate Duty Office.

(3) Question 3 (*a*) under the heading *Gifts Inter Vivos* on the current print of Form No. 36 accompanying the Inland Revenue Affidavit asks for information about gifts made within three years of the death. Information is now requested about gifts made within five years preceding the death.

The following are the relevant Budget Resolutions in connection with estate duty:—

### Rates of Estate Duty

"That in the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six, the scale of rates set out in the Table below shall be substituted for the scale of rates set out in the Sixth Schedule to the Finance (No. 2) Act, 1940, as the scale of rates of Estate Duty."

Table

| Principal Value of Estate | Rate per cent. of Duty |
|---|---|
| Not exceeding .. .. .. .. £2,000 | Nil |
| Exceeding— | |
| £2,000 and not exceeding .. .. 3,000 | 1 |
| 3,000 ,, ,, ,, .. .. 5,000 | 2 |
| 5,000 ,, ,, ,, .. .. 7,500 | 3 |
| 7,500 ,, ,, ,, .. .. 10,000 | 4 |
| 10,000 ,, ,, ,, .. .. 12,500 | 6 |
| 12,500 ,, ,, ,, .. .. 15,000 | 8 |
| 15,000 ,, ,, ,, .. .. 20,000 | 10 |
| 20,000 ,, ,, ,, .. .. 25,000 | 12 |
| 25,000 ,, ,, ,, .. .. 30,000 | 14 |
| 30,000 ,, ,, ,, .. .. 35,000 | 16 |
| 35,000 ,, ,, ,, .. .. 40,000 | 18 |
| 40,000 ,, ,, ,, .. .. 45,000 | 20 |
| 45,000 ,, ,, ,, .. .. 50,000 | 22 |
| 50,000 ,, ,, ,, .. .. 60,000 | 24 |
| 60,000 ,, ,, ,, .. .. 75,000 | 27 |
| 75,000 ,, ,, ,, .. .. 100,000 | 30 |
| 100,000 ,, ,, ,, .. .. 150,000 | 35 |
| 150,000 ,, ,, ,, .. .. 200,000 | 40 |
| 200,000 ,, ,, ,, .. .. 250,000 | 45 |
| 250,000 ,, ,, ,, .. .. 300,000 | 50 |
| 300,000 ,, ,, ,, .. .. 500,000 | 55 |
| 500,000 ,, ,, ,, .. .. 750,000 | 60 |
| 750,000 ,, ,, ,, .. .. 1,000,000 | 65 |
| 1,000,000 ,, ,, ,, .. .. 2,000,000 | 70 |
| 2,000,000 .. .. .. .. .. .. .. | 75 |

### Estate Duty—Gifts Inter Vivos, etc.

"That, in the case of persons dying on or after the tenth day of April, nineteen hundred and forty-six, periods of five years and two years before the death shall be substituted for the periods of three years and one year before the death which are material for Estate Duty purposes in relation to gifts *inter vivos* and in certain other circumstances."

# COURT PAPERS

## SUPREME COURT OF JUDICATURE

### EASTER SITTINGS, 1946

### COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

Rota of Registrars in Attendance on

| Date. | Emergency Rota. | Appeal Court I. | Mr. Justice Vaisey. |
|---|---|---|---|
| Mon., May 13 | Mr. Jones | Mr. Blaker | Mr. Andrews |
| Tues., ,, 14 | Reader | Andrews | Jones |
| Wed., ,, 15 | Hay | Jones | Reader |
| Thurs., ,, 16 | Farr | Reader | Hay |
| Fri., ,, 17 | Blaker | Hay | Farr |
| Sat., ,, 18 | Andrews | Farr | Blaker |

| | Group A. | | Group B. | |
|---|---|---|---|---|
| Date. | Mr. Justice Roxburgh *Non-Witness.* | Mr. Justice Wynn-Parry *Witness.* | Mr. Justice Evershed. *Witness.* | Mr. Justice Romer. *Non-Witness.* |
| Mon., May 13 | Mr. Farr | Mr. Hay | Mr. Jones | Mr. Reader |
| Tues., ,, 14 | Blaker | Farr | Reader | Hay |
| Wed., ,, 15 | Andrews | Blaker | Hay | Farr |
| Thurs., ,, 16 | Jones | Andrews | Farr | Blaker |
| Fri., ,, 17 | Reader | Jones | Blaker | Andrews |
| Sat., ,, 18 | Hay | Reader | Andrews | Jones |